# THE BAR ASSOCIATION BULLETIN

MONTHLY PUBLICATION OF THE

LOS ANGELES BAR ASSOCIATION, Los Angeles, California

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## MEMBERSHIP CAMPAIGN DRIVE.

About the middle of June, the Membership Campaign Committee of the Los Angeles Bar Association opened its drive for new members. The Committee is composed of Kemper Campbell, Chairman, Edward T. Bishop, Jesse E. Stephens, James H. Pope, Karl Lobdell, F. M. Andreani and Chas. L. Nichols.

At the outset a call was made upon every member of the Association to enlist his or her aid in the work in interviewing prospective new members. The result was a standing Committee of the Bar Association of over two hundred enthusiastic members. The regular Committee furnished each member of the standing Committee with the names and addresses of some half dozen prospects, and the results of each interview were duly reported.

The Committe was fortunate in securing the services of Mr. J. L. Elkins, who, for several years, was the traffic manager of the California Shipbuilding Company at Long Beach. His experience in directing traffic in the Los Angeles Harbor fitted him well for the task of handling the new members as they were ushered in. Mr. Elkins has communicated several times by telephone with the members of the standing Committee to urge promptness in the matter of interviews and reports. The Committee desires to express openly its apreciation for the courtesy extended to Mr. Elkins by all Committeemen.

The results achieved through this campaign machinery have been indeed gratifying. The Committee began with a list of approximately eight hundred prospective members from which to draw; to date, more than three hundred new members have been secured, including quite a few reinstatements of former members of the Association who have permitted themselves to be suspended for the nonpayment of dues.

Chief credit for the success of the campaign is due to the veteran Kemper Campbell. A great many will recall that during the year 1921 Mr. Campbell directed a similar campaign whereby the membership of the Association was increased from eight hundred to twelve hundred members. His intelligent direction, his willing and untiring personal efforts, alone have made possible the splendid results of the drive.

Our task, however, is not yet fully performed. There remain some five hundred eligible prospects within the city of Los Angeles who have not yet joined the Association. Moreover, there are approximately two hundred and fifty attorneys in neighboring cities within the county, who practice daily in our courts here, who are vitally interested in our problems and policies, who are eligible for membership and who should join.

We must keep up our good work. If any member of the Association is willing to assist further in soliciting new members, either in Los Angeles, or in the surrounding cities, please communicate with the Committee, 1408 Chapman Building, and the necessary information and data will be gladly furnished.

Throughout the present campaign new members will be accepted upon the payment of $5.00, which includes the subscription to the BULLETIN for the remainder of the year; suspended members will be reinstated upon the payment of $10.00, which likewise includes the subscription to the BULLETIN.

TO ALL NEW MEMBERS: When your application for membership in the Association has been duly approved by the Committee on Membership, you will be so notified. And, your certificate of membership will be forwarded to you as soon thereafter as practicable. Moreover, your name will be added to the regular mailing list immediately. If you fail to receive the BULLETIN after due notification of the approval of your application, please notify the editor.

## SELF GOVERNING BAR.

Assembly Bill No. 5, commonly known as the "Self Governing Bar Bill" failed to receive Executive approval. The Bill, as passed by the Assembly with an overwhelming majority, and by the Senate unanimously, provided for a Governing Board of fifteen Governors, to be selected directly by the Bar. While the Governor had the measure under consideration, the suggestion was made, among others that the Board of Governors should be selected by Executive appointment.

The attitude of the California Bar Association on this phase of the question, which is deemed fundamental, is well expressed by Mr. Kemper Campbell in a communication dated June 30, 1925, addressed to Mr. Fletcher Bowron, Executive Secretary to the Governor, as follows:

> "The California Bar Associations throughout the state are conducting their work under very difficult circumstances. They have been enabled to do this by maintaining a strictly non-political and non-partisan attitude. You will find as leaders in these various associations, working amicably side by side, men who are politically bitterly opposed to each other. We realize, as the Governor apparently does not, that the only way the Bar as a whole can be brought to a high standard is to place the responsibility for that standard directly upon the Bar itself—not exclusively, to be sure, because the present power of the courts is preserved and merely aided and made to function by the provision of the provisions of the proposed bill. But if the Governor were given the power to appoint the Board, whether this Governor or any other Governor, the matter would immediately get into the realm of partisan politics, dissention would arise, and the Bar would have no confidence in its leadership. An appointive board immediately becomes a part of a political machine and the leaders in this movement, whether friendly to the Governor or opposed to him politically, are unanimous in the view that an appointive board means a political board and a sacrifice of the ideals of this constructive measure."

As those sponsoring the Bill are thoroughly convinced that an appointive Board means a political Board, and a corresponding sacrifice of the ideals of the measure, it necessarily follows that they cannot and will not consent to the proposed change. All are agreed that Assembly Bill No. 5 is one of the most constructive measures ever advocated by the California Bar Association; its purposes are many and varied, but its ultimate object is to insure a better administration of justice—a matter of great importance to our profession, and of even greater moment to the public generally.

The Committee of the State Bar Association will report in detail at the annual meeting in September; a definite course of action will be formulated at that time. Undoubtedly, the program will mean a great deal of consistent, persistent work and effort on the part of the members of the Bar. Yet, from the splendid response to our appeal for cooperation in our fight for Executive approval, we are assured of any further assistance which may appear necessary.

JOSEPH J. WEBB,
Chairman Special Committee
on Self Governing Bar.

THE BAR ASSOCIATION BULLETIN
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## THANKS TO THE JOURNAL

Unexpected calls have been made upon the finances of the Bar Association this year by reason of our fights for the Bar Incorporation Bill, the Municipal Court, and other constructive measures. So, when the BULLETIN was suggested, it was necessary to make unusually convenient arrangements for the expense involved. Our suggestion to The Los Angeles Daily Journal met instant approval; they promptly consented to print and publish the BULLETIN free of any charge whatever, until we are able to launch out upon a commercial basis and even then, to publish it at absolute cost.

We believe the Daily Journal, a newspaper devoted largely to matters of legal import, appreciates the need of a bulletin of this character. And we know they have manifested a disposition to help us in every wise possible.

The BULLETIN desires to openly acknowledge its appreciation for the service rendered and to be rendered by The Los Angeles Daily Journal.

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On page four of the BULLETIN, one will find a series of decisions by the Committee on Legal Ethics of the Bar Association. It is believed that the presentation of these rulings, relating as they do to questions of professional conduct, and expressing the opinion of some of the leaders of the legal profession here after conscientious consideration of the matters involved, will prove to be most interesting and instructive. Insofar as practicable, a resume of these decisions will appear in each issue of the BULLETIN.

# THE BAR ASSOCIATION BULLETIN

## OUR POLICY

According to our Constitution, the Los Angeles Bar Association "is established to maintain the honor and dignity of the profession of the law" and, "to increase its usefulness in promoting the due administration of justice." It is believed that, as we gradually achieve these aims, the Bar will be restored to public favor and confidence. To this end, the work of the Association is two-fold: first, the disciplinary feature, and secondly, the creative or constructive feature.

Without doubt, our Association has performed the first of these duties in a most creditable manner. Many practical obstacles always conspire to impede the efforts of the Associaiton to discipline the members of the legal profession. It requires an amazing amount of time, patience, energy and money to invesitgate the conduct of attorneys, to hold hearings and to prosecute the cases to judgment. Yet, despite these odds, the Bar Association has scored real success in its endeavor to remove the unfit and to curb carelessness in professional deportment.

Credit for the success along these lines is due in large measure to our indefatigable Secretary Bob Variel, and to the different members of the Grievance Committee who, in addition to their crowded private practice and at real personal sacrifice, have worked tirelessly to the same end.

So, this is one way in which the Los Angeles Bar Association has sought to maintain the honor and dignity of the legal profession—to ferret out the crooks and shysters.

On the other hand, there is the constructive phase of our work. The legal profession can never regain its former position in public affairs unless and until the law is brought abreast of the needs of the day. As long as the law trails behind the other social sciences, the profession which administers it will command little respect. Bar associations, law schools and universities for legislators—all have their part to play.

To this end, the Los Angeles Bar Association is prosecuting a definite constructive course of action. It is trying, in every way possible, to increase the usefulness of the legal profession in the administration of justice. We are endeavoring to incorporate the Bar of the State in order to better accomplish this purpose; we conduct plebiscites to aid in the election and appointment of the best type of judges; we are bending our efforts to provide better judicial machinery; we are endeavoring to draft intelligent constitutional amendments, uniform state laws, and salutary changes in the substantive and adjective law, in order to secure a better administration of justice according to law; and we are aiding in every wise to improve the standards of the Bar by urging both higher qualifications for admission to the profession and better standards of demeanor while a member.

Such is the work of the Los Angeles Bar Association, yet the public generally and the legal profession as a whole are not familiar with all of the ins and outs of our work. Doubtless, even some of the members of the Association are not a little surprised upon reading this first issue of the BULLETIN to find such a varied assortment of activities.

In making known the real import of the work accomplished by the Bar Association, we believe the BULLETIN will meet a dire need. Our primary purpose will be to broadcast to all just what the Los Angeles Bar Association is doing for the betterment of the legal profession here. We shall try to answer the query so often propounded to the members of the Membership Campaign Committee in the recent drive for new members: "Why should I join the Los Angeles Bar Association?" Our policy will always be one of helpfulness. The BULLETIN is merely the mouthpiece of the Association, and we want every member to feel free to use its columns to send out some sort of message that will tend to further the aims of the Association and to edify the legal profession.

## APPOINTMENT OF EXPERT WITNESSES.

Expert testimony—the opinion of the witness on a question of science, art or trade when he is skilled therein—has always been admitted as evidence in the trial of actions under the laws of California (C. C. P. Sec. 1870 Sec. 9). It has been said that this Code provision "is but a legislative enactment of a well-settled rule of evidence at Common law." (54 Cal. 513).

But this state has never by law given the Court any power to appoint or select the expert witnesses. The selection, employment and production in Court of such witnesses have been left to the parties to the action, as in case of other witnesses.

This practice has gradually produced many grave and increasing evils, which have been from time to time referred to by the Courts.

The U. S. Supreme Court made this statement (16 L. Ed. 68) in 1858, which is confirmed many folds by the experiences of later years:

> "Experience has shown that opposite opinions of persons professing to be experts, may be obtained to any amount; and it often occurs that not only many days but even weeks are consumed in cross-examination to test the skill or knowledge of such witnesses and the correctness of their opinions, wasting the time and wearying the patience of both Court and jury; and perplexing, instead of elucidating, the questions involved in the issue."

The Supreme Court of California has many times referred to these evils and suggested the remedy.

Thus, in 1870 (40 Cal. 405) that Court through Justice Temple said:

> "These witnesses (experts) ought, perhaps, to be selected by the Court and should be impartial as well as learned and skillful. A contrary practice, however, is now probably too well established to allow the more salutary rule to be enforced, but it must be painfully evident to every practioner that these witnesses are generally but adroit advocates of the theory upon which the party calling them relies, rather than impartial experts, upon whose superior judgment and learning the jury can safely rely. Even men of the highest character and integrity are apt to be prejudiced in favor of the party by whom they are employed. And, as a matter of course, no expert is called until the party calling him is assured that his opinion will be favorable."

Again in 1906, the Court through Justice Henshaw, in commenting on expert testimony given in response to hypothetical questions, said (149 Cal. 243.):

> "This kind of expert testimony * * * is in the eye of the law of steadily decreasing value. The remedy can only come when the State shall provide that the Courts and not the litigants shall call a disinterested body or board of experts who shall review the whole situation and then give their opinion with their reasons therefor to the Court and jury regardless of the consequences to either litigant. So and so only can it be hoped to remove the estimate of infirmity which attaches at the present time to this kind of evidence."

These suggestions, through the efforts of the Bar Association, have at last received some response from the law making power.

The California Legislature at its last Session (1925) passed an Act which went into effect July 23, 1925, adding a new section 1871 to the Code of Civil Procedure, and providing:

> "Whenever it shall be made to appear to any Court or Judge thereof, either before or during the trial of any action or proceeding, Civil or Criminal, pending before such Court, that expert evidence is or will be required by the Court or any party to such action, or proceeding, such Court or Judge may, on motion of any party, or on motion of such Court or Judge, appoint one or more experts to investigate and testify at the trial of such action or proceeding relative to the matter or matters as to which such expert evidence is or will be required," etc.

It further provides:

That the Court or judge may fix the compensation of the experts appointed in addition to their witness fees, apportion such compensation between the parties, and may thereafter be taxed as other costs. That the expert so appointed may be called to testify by any party or by the Court, subject to examination or cross-examination and objection as to his qualifications, bias, etc.

That nothing in the Section shall prevent any party from calling other expert witnesses, but only ordinary witness fees for their attendance shall be allowed as costs.

That the Court or judge may at any time before or during the trial, limit the number of expert witnesses which may be called by any party.

It will be observed that this new section to the Code does not in any way modify or enlarge the cases in which expert testimony may be admitted, nor the rules governing the qualifications of witnesses as experts, nor the admissibility or value of their testimony. It does not change the former established practice, except in two respects:

1. It gives the Court power to appoint and call expert witnesses.

2. It empowers the Court to limit the number of such witnesses called by any party.

It may be thought more desirable if the provisions of this Section had been made broader, limiting the introduction of such testimony of only those experts appointed by the Court, and requiring the Court to inquire into and establish the qualifications of such witnesses as experts before

(Continued on page 4)

## THE RELATION BETWEEN THE BAR ASS'N. AND THE PUBLIC DEFENDER OF LOS ANGELES COUNTY

The office of Public Defender is one of the three legal departments of the county, and the business of the department is handled by eight lawyers, consisting of the Public Defender and seven deputies. The duties of the Public Defender, are defined by the County Charter; he does not, and cannot under the charter, represent people who are financially able to employ counsel.

### CRIMINAL CASES

During the last fiscal year the Public Defender acted as attorney for persons charged with criminal offenses in the Superior Court in 1386 cases. Of these 970 were felony cases; 32 were high grade misdemeanor cases in the Superior Court; 80 were omitting to provide cases in Department 3 of the Superior Court, and 294 were consultations in the office and in the County Jail. In addition to the above the Public Defender was appointed by the court to represent the respondents in 10 insanity trials and 3 persons charged with contempt of court. The Public Defender appeared as attorney for the defendant in 92 trials in the Superior Court in which the charge was a felony; resulting in 21 verdicts of not guilty, 9 verdicts of lesser offense than that charged in the information, and 56 verdicts of guilty. In 7 cases the jury diagreed.

### CIVIL CASES

In the civil department 16,148 persons applied at the office for legal assistance and consulted with the attorneys. Of these 3,419 were refused legal assistance or advice because they were able to pay private attorneys or because the office was without authority to handle their cases; 11,044 were given legal advice and 1,685 had claims for money due or property detained or injuries suffered, handled by the office.

In August, 1914, the Los Angeles Bar Association, at the request of the Public Defender, called upon members of the Bar Association for volunteers to handle cases of poor persons who applied at the Public Defender's office for legal assistance in cases which were outside the jurisdiction of that office. In response to this request about thirty attorneys volunteered and these were certified by the Bar Association to the Public Defender as proper persons to handle such cases. This list has been maintained under the supervision of the Bar Association. At the present time there are forty attorneys on that list. Since the Bar Association furnished the Public Defender with this list in August, 1914, 15,077 cases have been referred to these attorneys. In the fiscal year beginning July 1st, 1924, 2045 such cases were referred. The Public Defender finds, after years of dealing with these attorneys, that the cases have been very satisfactorily handled. The work of these members of the bar has been not only unselfish and commendable but very ably performed.

WM. T. AGGELER.

## DECISIONS ON LEGAL ETHICS

by the Committee on Ethics of the Los Angeles Bar Association.

Question 1:

Is it in violation of the canons of legal ethics for a company to issue cards advertising its practice of the law in the following words:

**JOHN DOE & CO.,**
**Attorneys and Counselors at Law,**
**Probate, Corporation, Bankruptcy and Admiralty Law,**
**Practice in Federal and State Courts Foreign Depositions,"**
without disclosing the names of the members of the company?

In the opinion of the committee the above advertisement is improper in that it does not disclose what member, if any, is an attorney, and contravenes the general rule laid down by the American Bar Association as to misleading advertisements by attorneys.

Question No. 2:

A patent attorney did work for a client on an application for a patent applied for by the client, and while the application was pending, severed his relations with the client. The patent has never been adjudicated. After the relations were severed, another client was charged with infringement of the patent. May the attorney defend for the second client in a suit by the first client in which infringement is alleged?

The opinion of the Committee is that, generally, the attorney is debarred from representing the second client in the matter if he would be in position to use any secret information or special knowledge gained by him from his first client. However, upon examination of all the facts in the particular inquiry here made, it appeared that no interpretation of the language of the claims may be in issue or that any issue will be raised as to the validity of the original patent, and that the files in the patent office and other matters to which they refer, relating to this patent, are subject to public inspection, and that the attorney gained no information through secret confidences of the original patentee of the prior art which he otherwise would not have had. In the light of this information the committee is of the opinion that the attorney will not be violating the canons of legal ethics by representing the second client in a suit brought by the original patentee for infringement.

Question No. 3:

May an attorney hold papers and files of his client until his fees are paid which were earned in the matter to which the papers and files pertained? In other words does he have a lien on the papers and files for the payment of his fees?

The committee has given this question a large amount of consideration, and a sub-committee still has it under advisement. This question being of so great importance to the members of the Bar, the sub-committee desires more time and has been given more time to further examine the authorities and report.

Question No. 4:

"Is it in violaiton of the canons of legal ethics for a firm of attorneys, members of the Bar Association, to insert their professional card and a general description of the character of the practice in which they are engaged and eulogistic writeup of the members of the firm, in an extra edition of a daily newspaper published once a year, which publication is intended to be an advertisement of the business and resources of the territory in which the newspaper circulates?"

Your committee thinks it improper and reprehensible for any firm of attorneys to carry in any newspaper the class of matter set forth in the advertisement submitted for our opinion. Such practice by members of our Association, in a measure, condones the pernicious activities of the banks and trust companies in their effort to obtain business. The self-laudation contained in the said advertisement exhibits bad taste and tends to bring the profession into more or less disrepute. Your committee further recommends that the practice of the members of inserting advertisements, whether pictures or self inspired admissions, in special editions of newspapers, be discontinued and suggest that the matter be opened for general discussion at some future meeting.

Question No. 5:

"Is it in violation of the canons of legal ethics for a firm of attorneys engaged in the general practice of law and as proctors in admiralty, by letter, to solicit shipping and admiralty cases along the Western coast, and in the letter recite somewhat of the experience and ability of the members of the firm?"

The matter referred to in the above question is objectionable for the reasons set forth in the canons promulgated by the American Bar Association, notwithstanding the fact that presumably this solicitation was directed to attorneys alone and not sent to the general public.

Question No. 6:

May an attorney who represented the plaintiff in a divorce action in which decree was obtained for the plaintiff and an order for payment to her of monthly payments of alimony after the final decree of divorce is entered, represent the ex-husband in an attempt to have the amounts of the monthly payments reduced or set aside.

To this question the Committee answers emphatically "No." It seems to the committee that no further answer need be made.

Question No. 7:

"(a) May an attorney take a case for a bank against a client and her husband which client he theretofore represented in a divorce action, he having learned of her property and property rights in the action?

(b) An attorney represented a client in a claim for rent and obtained settlement, but learned nothing regarding the client's property or property rights. May he afterwards accept employment from the client's wife in an action for divorce against the client?

(c) An attorney collected $100.00 for a client, and while he still held the money was informed by another person that the client owed such other person $245.00, and he advised such other person that he was holding $100.00 belonging to the client, and advised that suit be brought and garnishment be served on him. Suit was therefore brought by such other person and judgment was given for $7.50. The attorney charged his client $25.00 fees for making collection of the $100.00. Should charges be lodged against the attorney before the grievance committee for violating the confidence of his client?"

As to (a) above, it is the opinion of the Committee that the answer should be in the negative. An attorney, by reason of confidential communications made to him by his client, who learns of his client's property rights and interests, should not, even after the employment has terminated, accept employment in an action against the client to collect money.

As to (b) above, the question should be answered in the affirmative. When the employment of an attorney ceases, it cannot be unethical for him to accept employment in an action against the former client, providing he does not take advantage of the former client by using information obtained confidentially from him.

As to (c) it is the opinion of the Committee that the matter should be presented to the grievance committee or Bar Association for such action as shall seem best. It is clear that the attorney, under the facts set out, grossly violated his client's confidence by advising a creditor that he held moneys belonging to the client, and to bring action against the client and serve garnishment upon him.

WILLIAM HAZLETT,

### Appointment of Expert Witnesses

(Continued from Page 3)

their appointment. Still it is a great improvement upon the former practice and it is believed that if the powers so granted are faithfully invoked by the members of the bar, and properly exercised by the Courts, this new law will cure many of the evils growing out of the old practice, and materially aid in a more speedy and exact administration of justice through our Courts.

JAMES G. SCARBOROUGH.